

(2007) 08 DEL CK 0254

In the Delhi High Court

Case No : Writ Petition (C) No. 2936 of 2007

Joint Commissioner of Police

APPELLANT

Vs

Ex. ASI (Min.) Shiv Kumar

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Citation : (2008) 2 SLJ 52

Hon'ble Judges : Sudershan Kumar Misra, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : V.K. Tandon and Manpreet Kaur, for the Appellant; Anil Singal, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Sarin, J.—Petitioner, Joint Commissioner of Police, through this writ petition seeks quashing and setting aside of order dated 1.12.2006 passed by Central Administrative Tribunal in O.A. No. 1191/2005. Vide the impugned order, petitioner was directed to forthwith reinstate the respondent Shiv Kumar in service. Tribunal held that the respondent be entitled to all consequential benefits, including pay and allowances as per Fundamental Rules.

2. Brief Facts of the case are:

i) Respondent had applied for non refundable loan of Rs.75,000/- from his GPF Account No. 35892 while posted in Crime Against Women Cell, Nanak Pura. The loan application was processed in Accounts Branch, CWC, Nanak Pura and sent to Police Headquarters from where sanction order was received on 8.1.2001. On the basis of the sanction order, bill was passed and Rs. 75,000/- were drawn and disbursed to respondent vide Bill No. 190 against proper receipt on 9.1.2002.

ii) Respondent again applied for refundable loan for Rs.1,20,000/- from his GPF Account on 4.4.2003 without disclosing the factum of availing of the first loan of Rs.75,000/-. The case was again processed by Accounts Branch and sent to PHQ from where the sanction order was received on 17.4.2003. The amount was

disbursed to the respondent by Accounts Branch by cheque No. 223451 on 2.5.2003 against proper receipt.

iii) A Departmental Enquiry was initiated against the Respondent vide order dated 28.8.2003 under the provisions of Delhi Police (Punishment and Appeal) Rules 1980. It is alleged that the respondent had removed the page of his GPF Pass Book on which entry was made by the PAO about withdrawal and payment of Rs. 75,000/- to him. It was further alleged that he manipulated and managed a GPF balance of Rs. 1,52,265/- for the year 2001-2001 wherein withdrawal of Rs. 75,000/- was not mentioned despite the fact that a column existed in balance sheet format regarding the withdrawals. It was alleged that he managed the entries in his GPF Pass Book from the period 03/2001 to 10/2001 about the details of his monthly subscription which as per rules are done by accounts branch only but entries in deduction column from March 2001 to October 2001 were not made by the Accounts Branch in his GPF Pass Book.

iv) Departmental enquiry was entrusted to inspector Ram Singh, Departmental Enquiry Cell. Enquiry Officer completed its proceedings and submitted his findings on 27.2.2004 concluding therein that the charge against the respondent was fully proved. Copy of the findings of enquiry officer was served upon the respondent on 6.4.2004 to which he submitted his reply on 20.4.2004

v) After going through the findings of enquiry officer, Disciplinary Authority passed an order dated 2.6.2003 concluding as under

It was proved without doubt that GPF passbook was with the respondent because this was his copy and every employee keeps it with himself or herself. Since, only respondent was the beneficiary of the amount, nobody else had any motive to make any changes in the GPF Passbook or misrepresent his case with the PHQ, etc. He was aware that his GPF Account did not have the applied amount and, Therefore, he had willfully put up the case for withdrawal of amount which was not due to him. The charges of malafide and withdrawal of funds, although his own, by misrepresenting the facts are proved.

The Disciplinary Authority, Therefore awarded him punishment of forfeiture of 2 years approved service permanently

vi) On 18.7.2004 Respondent filed an appeal against the order of punishment. Appellate Authority came to the conclusion that the punishment awarded to the respondent by the Disciplinary Authority was not in proportion and commensurate with the gravity of misconduct. The Appellate Authority in exercise of its powers conferred u/s 25(1)d of Delhi Police (Punishment and Appeal) Rules 1980, disagreeing with the punishment awarded by the Disciplinary Authority issued a show cause notice dated 21.2.2005 for removal from service, which was received by respondent on 1.3.2005. Objections were filed by the respondent to the show cause notice.

vii) Appellate Authority after going through the objections raised by the

respondent to the show cause notice enhanced the punishment to removal from service vide order dated 21.4.2005. Aggrieved by the said order, respondent filed an OA No. 1191/2005 before the Central Administrative Tribunal seeking quashing of the order passed by appellate authority. The Tribunal, vide order dated 1.12.2006, set aside the order passed by the appellate authority as well as the Disciplinary Authority and directed the petitioner to reinstate the respondent in service and further held that the respondent be entitled to all consequential benefits, including pay and allowances as per Fundamental Rules. Hence the Present Petition by Joint Commissioner of Police.

3. Petitioner submitted that the time when the respondent had applied for second loan of Rs. 1,20,000/-, the maximum balance that could have been available in the GPF Account of the respondent would be Rs. 68,980/- only. He submitted that because of the manipulation and fabrication of documents by or at the behest of the respondent GPF passbook did not indicate that an amount of Rs. 75,000/- had been withdrawn by the respondent on 9.1.2002. Petitioner contends that the page containing the entry was surreptitiously removed by or on behalf of respondent.

4. Petitioner submitted that it was proved without doubt that GPF passbook was with the respondent. This was his copy and every employee keeps it with himself/herself. Respondent was the only beneficiary of the amount and nobody else had any motive to make any changes in the GPF passbook or misrepresent facts with PHQ etc. Petitioner further urged that the respondent was aware that his GPF account did not have the amount applied for and Therefore he had willfully put up the case for withdrawal of amount which was not due to him at the time when regular staff handling the account was on leave.

5. Petitioner further urged that respondent knew that woman/HC Neelam Bhatia was looking after the work of accounts branch only for a day on 4.4.2003 and the respondent took advantage of the fact that accountant was on leave. W/HC Neelam Bhatia was not aware of the full facts regarding GPF accounts/previous withdrawal of GPF of the respondent.

6. Learned Counsel for respondent submitted that simply because respondent happens to be the beneficiary was not sufficient to conclude that he was responsible for the interpolation and fabrication of documents. He urged that the petitioners had failed to produce or examine any handwriting experts to prove that the entries in question from November 2001 to February 2001 were in hands of the respondent. He further stated that the tribunal had rightly held that it was the responsibility of the GPAO to make entries in the passbook and it was not the province of the respondent to make those entries. Mr. Singal, counsel for respondent sought to justify the findings of the Tribunal by primarily relying on the judgment of the Tribunal itself.

7. We have heard the counsel for both parties and perused the documents available on record along with written submissions. We have examined the

passbook and other records which were called for Vide order dated 19.7.2007.

8. Firstly, the respondent would have been fully aware of the balance in his GPF account as it is based on accumulation of monthly contributions made by the respondent himself. In the attendant circumstances, respondent having already availed the benefit of withdrawal of Rs. 75,000/-, and considering that his monthly contribution was a meager amount of Rs. 1,100 per month, he could not have visualized that his balance would have been Rs. 1,20,000 by April 2003. It is also noted that during the intervening period of applying for the two loans, i.e. between January 2002 to April 2003, contributions made by the respondent in the account were only to the tune of Rs. 13,260/-. We, Therefore are of the view that the decision of Disciplinary Authority and Appellate Authority that the respondent would have known his balance in the GPF account is short of Rs. 1,20,000/-, the amount for which he sought a refundable loan to be correct and sound. We are of the view that these facts were within the special knowledge of respondent and need not have been separately proved by independent evidence led by petitioner. In the above perspective, we do not find it necessary to go into the question whether the respondent has himself carried out the interpolations and substituted page 19 of the passbook or he got the entries fabricated in collusion or otherwise with the employees of GPAO. It is sufficient for us to notice that the respondent retained the second loan amount without any qualms until it was so discovered.

9. Counsel for respondent also refuted the show cause notice as to why penalty should not be enhanced during the proceedings before the tribunal on the ground that it reflected pre-determination and pre-judgment. Considering the view we are taking in the matter, the above question and plea of the respondent need not detain us any further.

10. It may be noted that the respondent has been returning the second loan amount withdrawn from GPF account on Installments of Rs. 4000/- per month and only 2 Installments are left to be deposited. After taking into consideration, attendant facts and circumstances, we find that extreme punishment of removal from service would be disproportionate and excessive in this case. At the same time, it is also noted that applying the principles of preponderance of probabilities, the misconduct of the respondent stands established.

Following the judgment of the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, and considering the course of litigation in the present case, in our view, this is a fit case for the Court to interfere with the conclusion as regards the finding and penalty to be imposed and mould the relief so as to make it appropriate to the facts of the case without remanding it.

In view of the foregoing discussion, we are of the view that the order of the Appellate Authority imposing the punishment of removal from service would be disproportionate and excessive and deserves to be set aside and is set aside. We are of the view that the imposition of punishment as imposed by the Disciplinary

Authority of forfeiture of 2 years of approved service would meet the ends of justice. Counsel for the respondent on receiving the instructions from the respondent states that the above penalty of forfeiture of 2 years of approved service, as imposed by the Disciplinary Authority is acceptable to him and he would abide by the same. Counsel for the petitioner also has no objection to the same. Writ petition is, Therefore, partly allowed and the impugned orders of the Tribunal and the Appellate Authority are set aside and the penalty of forfeiture of 2 years of approved service, as passed by the Disciplinary Authority is restored and upheld.

Writ petition stands disposed of in the above terms.